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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,935	07/03/2006	Juergen Schmenger	3643	9953

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EXAMINER
ELHILO, EISA B

ART UNIT	PAPER NUMBER
1796	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/584,935	SCHMENGER ET AL.	
	Examiner	Art Unit	
	Eisa B. Elhilo	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/3/2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 1-13 are pending in this application.

DETAILED ACTION

Claim Objections

1. Claims 4-7 objected to because of the following informalities:

Claims 4-7 recite the term "among". This term should be changed with -- the group consisting of--. Appropriate correction is required.

2 Claim 11, recites the term "car-rier". This term should be corrected to --carrier--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3 The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4 Claim 13 provides for the use of a composition, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 13 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex*

parte Dunki, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

5 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5 and 7-13 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Pratt et al. (US 2004/0019982 A1) in view of Allwohn et al. (US 6,372,203 B1).

Pratt et al. (US' 982 A1) teaches a dyeing composition comprising fatty alcohols such as stearyl alcohol and cetyl alcohol in the amount of 0.05 to 20% which is overlapped with the claimed amounts as claimed in claims 1, 4 and 13 (see page 29, paragraph, 0130), fatty acid-mono and dialkanolamide as claimed in claims 1 and 5 (see page 28, paragraph, 0125), fatty acid alkoxylates (see page 28, paragraph, 0123), anionic surfactants as claimed in claims 1, 7, 8 and 13 (see page 28, paragraphs, 0115-0122) and hydrogen peroxide as oxidizing agent as claimed in claims 11-12 (see page 24, paragraph, 0068) and wherein the composition is free of monomeric ammonium compounds, cationic emulsifiers as claimed in claim 9 (see page 30, paragraphs, 0147-0150).

The instant claims differ from the reference by reciting the percentage amounts of fatty acid alkoxylate in the dyeing composition.

Allwohn et al. (US 6,372,203 B1) in analogous art of hair treatment formulation, teaches a dyeing composition comprising additive ingredients usually used for hair treatment

composition comprising fatty alcohols, fatty alcohols sulfates (anionic surfactants), ethylene glycol distearate in the amount of 0.01 to 5% (see col. 9, lines 1-19).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the dyeing composition Pratt et al. (US' 982 A1) by optimizing the dyeing ingredients in the composition to arrive at the claimed invention with a reasonable expectation of success in order to get the maximum effective amounts of these dyeing ingredients in the composition, and, would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claims ratios, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a dyeing composition by optimizing the amounts of the dyeing ingredients such as fatty alcohols, alkanolamides and anionic surfactants in the dyeing composition to arrive at the claimed invention because the references clearly teach and disclose these dyeing ingredients in the amounts that overlapped with the claimed amounts, and, thus a person of the ordinary skill in the art would be motivated to optimizing the amounts of these dyeing ingredients in the composition in order to get the maximum effective amounts of these ingredients in the composition and would expect such a composition to have similar properties to those claimed. Absent unexpected results.

Further, applicants have not shown on record the criticality of the claimed ratios between the dyeing ingredients in the claimed composition over the compositions of the prior art of record.

6 Claim 6 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Pratt et al. (US 2004/0019982 A1) in view of Allwohn et al. (US 6,372,203 B1) and further in view of Cannell et al. (US 6,015,574).

The disclosures of Pratt et al. (US' 982 A1) and Allwohn et al. (US' 203 B1) as described above do not teach or disclose a formula for ethoxylated fatty alcohols or fatty alcohol polyglycol ethers as claimed.

However, Allwohn et al. (US' 203 B1) suggests the use of ethoxylated fatty alcohols in the hair treatment composition (see col. 9, lines 16-17).

Cannell et al. (US' 574) in another analogous art of hair treating formulation, teaches a hair dyeing composition comprising species of ethoxylated fatty alcohols that read of the claimed formula (I) as claimed in claim 6 (see col. 4, lines 14-35).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Pratt et al. (US' 982 A1) by incorporating the claimed species of ethoxylated fatty alcohols as taught by Cannell et al. (US' 574) to arrive at the claimed invention. Such a modification would be obvious because Allwohn et al. suggests the use of ethoxylated fatty alcohols in the dyeing composition. Cannell et al. clearly teaches a dyeing composition comprising the species of ethoxylated fatty alcohols that read of the claimed formula (I), and, thus a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

7 Claims 1-13 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Willi et al. (DE 3834142).

Willi et al. (DE' 142) teaches a hair dyeing composition comprising 2- 6% of fatty alcohols with 14-20 carbon atoms, 2-6% of coconut fatty acid monoethanolamide, 0.5 to 4% of glycol distearate, 4-7% of alcohol ethoxylated with 2 mol of ethylene oxide and 0.1 to 5% of sodium lauryl alcohol diglycol ether sulfates as claimed in claims 1-13 (see abstract).

The instant claims differ from the reference by reciting the weight ratios between the dyeing ingredients.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a dyeing composition by optimizing the amounts of the dyeing ingredients in the composition to arrive at the claimed invention. Such a modification would be obvious because the Willi et al. clearly teaches a dyeing composition comprising similar dying ingredients in the amounts that overlapped with the claimed ranges, and, thus, a person of the ordinary skill in the art would have been motivated to formulate such a composition by optimizing the amounts of the dyeing ingredients in the composition in order to get the maximum effective amounts and would expect such a composition to have similar properties to those claimed, absent unexpected results.

Conclusion

8 The remaining references listed on from PTO-1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eisa B Elhilo/
Primary Examiner, Art Unit 1796
April 9, 2008